

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

House Engrossed  
**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

CHAPTER 108

# HOUSE BILL 2163

AN ACT

AMENDING SECTION 35-323, ARIZONA REVISED STATUTES; RELATING TO INVESTMENT OF PUBLIC MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 35-323, Arizona Revised Statutes, is amended to  
3 read:

4 35-323. Investing public monies; bidding; security and other  
5 requirements

6 A. The treasurer shall invest and reinvest public monies in securities  
7 and deposits with a maximum maturity of five years. All public monies shall  
8 be invested in eligible investments. Eligible investments are:

9 1. Certificates of deposit in eligible depositories.

10 2. Certificates of deposit in one or more federally insured banks or  
11 savings and loan associations in accordance with the procedures prescribed in  
12 section 35-323.01.

13 3. Interest bearing savings accounts in banks and savings and loan  
14 institutions doing business in this state whose accounts are insured by  
15 federal deposit insurance for their industry, but only if deposits in excess  
16 of the insured amount are secured by the eligible depository to the same  
17 extent and in the same manner as required under this article.

18 4. Repurchase agreements with a maximum maturity of one hundred eighty  
19 days.

20 5. The pooled investment funds established by the state treasurer  
21 pursuant to section 35-326.

22 6. Obligations issued or guaranteed by the United States or any of the  
23 senior debt of its agencies, sponsored agencies, corporations, sponsored  
24 corporations or instrumentalities.

25 7. Bonds, NOTES or other evidences of indebtedness of this state or  
26 any of its counties, incorporated cities or towns or school districts.

27 8. Bonds, notes or evidences of indebtedness of any county, municipal  
28 district, municipal utility or special taxing district of any state that are  
29 payable from revenues, earnings or a special tax specifically pledged for the  
30 payment of the principal and interest on the obligations, and for the payment  
31 of which a lawful sinking fund or reserve fund has been established and is  
32 being maintained, but only if no default in payment on principal or interest  
33 on the obligations to be purchased has occurred within five years of the date  
34 of investment, or, if such obligations were issued less than five years  
35 before the date of investment, no default in payment of principal or interest  
36 has occurred on the obligations to be purchased nor any other obligations of  
37 the issuer within five years of the investment.

38 9. Bonds, notes or evidences of indebtedness issued by any county  
39 improvement district or municipal improvement district of any state to  
40 finance local improvements authorized by law, if the principal and interest  
41 of the obligations are payable from assessments on real property within the  
42 improvement district. An investment shall not be made if:

43 (a) The face value of all such obligations, and similar obligations  
44 outstanding, exceeds fifty per cent of the market value of the real property,  
45 and if improvements on which the bonds or the assessments for the payment of

1 principal and interest on the bonds are liens inferior only to the liens for  
2 general ad valorem taxes.

3 (b) A default in payment of principal or interest on the obligations  
4 to be purchased has occurred within five years of the date of investment, or,  
5 if the obligations were issued less than five years before the date of  
6 investment, a default in the payment of principal or interest has occurred on  
7 the obligations to be purchased or on any other obligation of the issuer  
8 within five years of the investment.

9 10. Commercial paper of prime quality that is rated within the top two  
10 ratings by a nationally recognized rating agency ~~or its successors~~. All  
11 commercial paper must be issued by corporations organized and doing business  
12 in the United States.

13 11. Bonds, debentures and notes that are issued by corporations  
14 organized and doing business in the United States and that are rated within  
15 the top three ratings by a nationally recognized rating agency ~~or its~~  
16 ~~successors~~.

17 12. Negotiable or brokered certificates of deposit issued by a  
18 nationally or state chartered bank or savings and loan association.

19 B. Certificates of deposit shall be purchased from the eligible  
20 depository bidding the highest permissible rate of interest. No monies over  
21 one hundred thousand dollars may be awarded at any interest rate less than  
22 one hundred three per cent of the equivalent bond yield of the offer side of  
23 United States treasury bills having a similar term. If the eligible  
24 depository offering to pay the highest rate of interest has bid only for a  
25 portion of the monies to be awarded, the remainder of the monies shall be  
26 awarded to eligible depositories bidding the next highest rates of interest.

27 C. An eligible depository is not eligible to receive total aggregate  
28 deposits from this state and all its subdivisions in an amount exceeding  
29 twice its capital structure as outlined in the last call of condition of the  
30 superintendent of financial institutions.

31 D. If two or more eligible depositories submit bids of an identical  
32 rate of interest for all or any portion of the monies to be deposited, the  
33 award of the deposit of the monies shall be made to the eligible depository  
34 among those submitting identical bids having, at the time of the bid opening,  
35 the lowest ratio of total public deposits in relation to its capital  
36 structure.

37 E. Each bid submitted, and not withdrawn prior to the time specified,  
38 constitutes an irrevocable offer to pay interest as specified in the bid on  
39 the deposit, or portion bid for, and the award of a deposit in accordance  
40 with this section obligates the depository to accept the deposit and pay  
41 interest as specified in the bid pursuant to which the deposit is awarded.

1       F. The treasurer shall maintain a record of all bids received and  
2 shall make available to the board of deposit at its next regularly scheduled  
3 meeting a correct list showing the bidders, the bids received and the amount  
4 awarded. These records shall be available to the public and shall be kept in  
5 the possession of the treasurer for not less than two years from the date of  
6 the report.

7       G. Any eligible depository, before receiving a deposit in excess of  
8 the insured amount under this article, shall deliver collateral for the  
9 purposes of this subsection equal to at least one hundred one per cent of the  
10 deposit. The collateral shall be any of the following:

11       1. A bond executed by a surety company that is approved by the  
12 treasury department of the United States and authorized to do business in  
13 this state. The bond shall be approved as to form by the legal advisor of  
14 the treasurer.

15       2. Securities or instruments of the following character:

16       (a) United States government or agency obligations.

17       (b) State, county, school district and other district municipal bonds.

18       (c) Registered warrants of this state, a county or other political  
19 subdivisions of this state, when offered as security for monies of the state,  
20 county or political subdivision by which they are issued.

21       (d) First mortgages and trust deeds on improved, unencumbered real  
22 estate located in this state. No single first mortgages or trust deeds may  
23 represent more than ten per cent of the total collateral. The treasurer may  
24 require that the first mortgages or trust deeds comprising the total  
25 collateral security be twice the amount the eligible depository receives on  
26 deposit. First mortgages or trust deeds qualify as collateral subject to the  
27 following limitations:

28       (i) The promissory note or other evidences of indebtedness secured by  
29 such first mortgage or trust deed shall have been in existence for at least  
30 three years and shall not have been in default during this period.

31       (ii) An eligible depository shall at its own expense execute, deposit  
32 with the treasurer and record with the appropriate county recorder a complete  
33 sale and assignment with recourse in a form approved by the attorney general,  
34 together with an unconditional assumption of obligation to promptly pay to  
35 the entitled parties public monies in its custody upon lawful demand and  
36 tender of resale and assignment.

37       Eligible depositories may deposit the security described in this subdivision  
38 with the state treasurer, and county, city or town treasurers may accept the  
39 security described in this subdivision at their option.

40       3. The safekeeping receipt of a federal reserve bank or any bank  
41 located in a reserve city, or any bank authorized to do business in this  
42 state, whose combined capital, surplus and outstanding capital notes and  
43 debentures on the date of the safekeeping receipt are ten million dollars or  
44 more, evidencing the deposit therein of any securities or instruments  
45 described in this section. A safekeeping receipt shall not qualify as

1 security, if issued by a bank to secure its own public deposits, unless  
2 issued directly through its trust department. The safekeeping receipt shall  
3 show upon its face that it is issued for the account of the treasurer and  
4 shall be delivered to the treasurer. The safekeeping receipt may provide for  
5 the substitution of securities or instruments which qualify under this  
6 section with the affirmative act of the treasurer.

7 H. The securities, instruments or safekeeping receipt for the  
8 securities, instruments or warrants shall be accepted at market value if not  
9 above par, and, if at any time their market value becomes less than the  
10 deposit liability to that treasurer, additional securities or instruments  
11 required to guarantee deposits shall be deposited immediately with the  
12 treasurer who made the deposit and deposited by the eligible depository in  
13 which the deposit was made.

14 I. The condition of the surety bond, or the deposit of securities,  
15 instruments or a safekeeping receipt, must be such that the eligible  
16 depository will promptly pay to the parties entitled public monies in its  
17 custody, upon lawful demand, and will, when required by law, pay the monies  
18 to the treasurer making the deposit.

19 J. Notwithstanding the requirements of this section, any institution  
20 qualifying as an eligible depository may accept deposits of public monies to  
21 the total then authorized insurance of accounts, insured by federal deposit  
22 insurance, without depositing a surety bond or securities in lieu of the  
23 surety bond.

24 K. An eligible depository shall report monthly to the treasurer the  
25 total deposits of that treasurer and the par value and the market value of  
26 any pledged collateral securing those deposits.

27 L. When a security or instrument pledged as collateral matures or is  
28 called for redemption, the cash received for the security or instrument shall  
29 be held in place of the security until the depository has obtained a written  
30 release or provided substitute securities or instruments.

31 M. The surety bond, securities, instruments or safekeeping receipt of  
32 an eligible depository shall be deposited with the treasurer making the  
33 deposit, and the treasurer shall be the custodian of the bond, securities,  
34 instruments or safekeeping receipt. The treasurer may then deposit with the  
35 depository public monies then in the treasurer's possession in accordance  
36 with this article, but not in an amount in excess of the surety bond,  
37 securities, instruments or safekeeping receipt deposited, except for federal  
38 deposit insurance.

39 N. The following restrictions on investments are applicable:

40 1. An investment of public operating fund monies shall not be invested  
41 for a maturity of longer than five years.

42 2. The board of deposit may order the treasurer to sell any of the  
43 securities, and any order shall specifically describe the securities and fix  
44 the date upon which they are to be sold. Securities so ordered to be sold  
45 shall be sold for cash by the treasurer on the date fixed in the order, at

1 the then current market price. The treasurer and the members of the board  
2 are not accountable for any loss occasioned by sales of securities at prices  
3 lower than their cost. Any loss or expense shall be charged against earnings  
4 received from investment of public funds.

5 0. If the total amount of subdivision monies available for deposit at  
6 any time is less than one hundred thousand dollars, the subdivision board of  
7 deposit shall award the deposit of the funds to an eligible depository in  
8 accordance with an ordinance or resolution of the governing body of the  
9 subdivision.

APPROVED BY THE GOVERNOR APRIL 14, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2011.

Passed the House March 1, 20 11

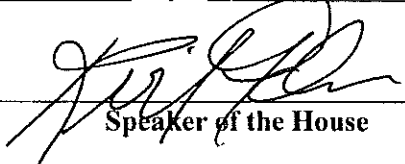
Passed the Senate April 7, 20 11

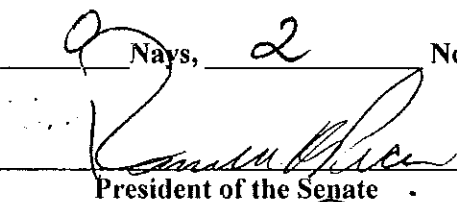
by the following vote: 56 Ayes,

by the following vote: 98 Ayes,

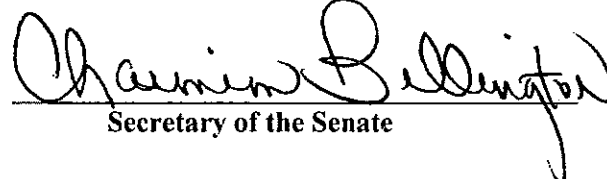
1 Nays, 3 Not Voting

9 Nays, 2 Not Voting

  
Speaker of the House

  
President of the Senate

  
Cheryl Laube  
Chief Clerk of the House

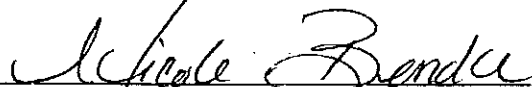
  
Charmine Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR


This Bill received by the Governor this

11 day of April, 20 11

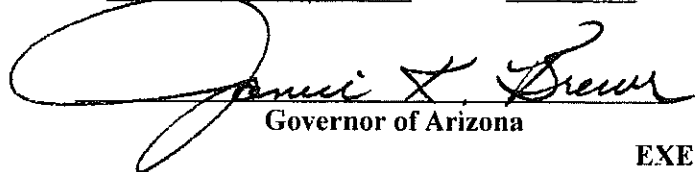
at 2:40 o'clock P. M.

  
Secretary to the Governor

Approved this 14th day of



at 2:15 o'clock P. M.

  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 14th day of April, 20 11

at 5:07 o'clock P. M.

  
Secretary of State

H.B. 2163